

Sr.No.111

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-3327-2019(O&M)
Date of decision:26.02.2020**

Jaswinder Singh

... Petitioner(s)

versus

State of Punjab

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Saurabh Garg, Advocate
for the petitioner.

Jasgurpreet Singh Puri, J.(Oral)

Present revision petition has been filed assailing the judgment dated 12.09.2018 passed by the learned Judicial Magistrate Ist Class, Patiala convicting the petitioner under Sections 279 and 304-A IPC as well as the judgment dated 13.11.2019 passed by the learned lower Appellate Court upholding the judgment.

The facts in the present case are that on 06.04.2015 the deceased Jaswant Singh son of Harlal Singh was brought dead in the roadside accident at Govt. Rajindra Hospital, Patiala and thereafter, the police officials reached the dead house of the said hospital in the evening. On the same day no proceedings were done but on the very next day the Investigating Officer alongwith other police officials reached the said hospital where the brother of the deceased, namely, Surinder Singh was

present and described about the accident which took place at 4:30 pm on 06.04.2015. It was described by him that Tata Xenon vehicle No.CH-01-AX/8725 which was driven in a rash and negligent manner had hit the cycle of his brother from back side due to which his brother fell into the dig alongside the road. The deceased received injuries on the head and ambulance was called and thereafter, he was sent to the Govt. Rajindra Hospital, Patiala where he was declared brought dead. As per statement of Surinder Singh who is the brother of the deceased, Jaswant Singh was also on the cycle ahead of him but at a distance of about 20 feet. Thereafter, the Investigating Officer alongwith the police officials went on the spot and recovered the cycle as well the offending vehicle from there got photographs and prepared recovery memos regarding the possession of both cycles as well as the offending vehicle. The petitioner accused was arrested on 09.04.2015.

During the trial, the prosecution examined the complainant Surinder Singh as PW-1 who is the brother of the deceased, Sukhdev Singh as PW-2 who identified the dead body of deceased Jaswant Singh, Dr. Preet Inder Singh Chahal, Sr. Resident Govt. Medical College, Patiala as PW-3 who gave his medical opinion, Gurpiar Singh as PW-4 who was the police official and part of police party who had accompanied the Investigating Officer to the hospital as well as the spot, Lakhwinder Singh as PW-5 who was the photographer and had clicked the photographs of offending vehicle, Davinder Singh Rawat Data Entry Operator Officer RLA, Chandigarh as PW-6 who brought the above-said copies of screening report of RC No.CH01AX8725 which was in the name of the petitioner accused Jaswant Singh, Head Constable Rajinder Kumar Police official as PW-7

who mechanically examined the offending vehicle, ASI Manjit Singh as PW-8 who was the Investigating Officer, Constable Kuldeep Singh as PW-9 who was also member of the police party alongwith the Investigating Officer. Thereafter, the statement of the accused was also recorded under Section 313 Cr.P.C. In defence evidence DW-1 Himmat Singh was examined. Thereafter, learned Judicial Magistrate Ist Class, Patiala vide judgment dated 12.09.2018 convicted the petitioner under Sections 279 and 304-A IPC and was ordered to undergo R.I. sentence for 06 months under Section 279 IPC alongwith fine of Rs.500/- and R.I. for 02 years under Section 304-A IPC alongwith fine of Rs. 500/-.

The petitioner assailed the aforesaid judgment before the learned Additional Sessions Judge, Patiala who after hearing rival contentions of the parties, dismissed the appeal vide judgment dated 13.11.2019.

The petitioner has now filed the present Revision petition assailing both the aforesaid judgments.

Learned counsel for the petitioner has submitted *firstly*, that FIR was lodged with the delay of one day and since no reasoning is coming forth justifying the said delay, it would be fatal for the prosecution, *secondly*, that there is no document to show that the body of the deceased was brought to the hospital and who brought the body to the hospital, *thirdly*, the MLR was not brought on record, *fourthly*, the identification parade was not conducted and *fifthly*, no detailed inquiry was made at the spot. Learned counsel for the petitioner has further submitted that prosecution story is defective and prosecution has not been able to prove its case beyond a reasonable doubt and therefore, petitioner ought to have been

acquitted in the present case. Learned counsel for the petitioner has relied upon the statement of DW-1, namely, Himmat Singh son of Teja Singh to substantiate his case with regard to the occurrence of the accident. He submitted that aforesaid witness had deposed that when he was travelling from Patiala to Chandigarh on 06.04.2015, he had taken lift in the vehicle of Jaswinder Singh petitioner and he saw an accident on the road where some injured person was lying and that they held him and that the petitioner had called the ambulance for taking him to the hospital and therefore, no accident took place with the vehicle of the petitioner. Learned counsel for the petitioner has further submitted that in view of the statement made by said Himmat Singh, the petitioner ought to have been acquitted of charges and therefore, has prayed for setting aside the impugned judgments.

I have heard learned counsel for the petitioner at length. On 10.12.2019, this Court also ordered for the requisition of the lower Court records so that the same may be perused. Resultantly, I have also perused the record of the learned lower Courts in this regard. The case which has been put forth by the prosecution is that on 06.04.2015, a telephonic message was received by the police that the deceased Jaswant Singh son of Harlal Singh has died in a road accident and his body was lying in dead house of Govt. Rajindra Hospital, Patiala. Therefore, HC Manjit Singh who was the Investigating Officer of the case alongwith other police officials reached the dead house of the said Govt. Rajindra Hospital, Patiala where at that point of time, no relative of the deceased was present. However, on the next day, i.e. 07.04.2015, the Investigating Officer alongwith the police officials again reached the said hospital and met the brother of the deceased, namely, Surinder Singh alongwith other relatives of the deceased who

described the entire event of accident that on 06.4.2015 the said Surinder Singh alongwith his brother Jaswant Singh (deceased) were going to the village on their respective cycles from Bahadurgarh after finishing their work and his brother was ahead of him. At about 4:30 pm when they reached near Casaba Resort Palace, near Mithu Majra Main Road, then from Bahadurgarh side, one Tata Xenon vehicle No.CH-01-AX/8725 which was being driven by the petitioner Jaswinder Singh and whose name he came to know later on was coming at a very fast speed and in a negligent manner without blowing any horn struck against the cycle of his brother from back side due to which his brother fell down and his cycle got entangled with the said vehicle. Thereafter, the driver of the said vehicle fled away from the spot and his brother suffered injuries on his head and he shifted his brother to Govt. Rajindra Hospital, Patiala in Ambulance where his brother was declared brought dead by the Doctor. According to him, the accident had taken place due to driving of the said vehicle at the very high speed and negligent manner by its driver. Thereafter, police after recording the statement of the complainant registered the present FIR and the post mortem of the dead body was also conducted and after doing the same, the dead body was handed over to the legal heirs. The police started its process by visiting the spot, preparing site plan and clicking the photographs etc. The offending vehicle and the cycle involved in the accident were also taken in police possession through separate memo and offending vehicle was also got mechanically tested. Thereafter, on 09.04.2015, the petitioner accused was arrested and he also produced the original RC of the offending vehicle, driving license and copy of insurance which were taken into possession by the police. Thereafter, the challan was presented to the competent court.

During the trial, statements of the witnesses were recorded which not only substantiated the case of the prosecution but also led to an inevitable conclusion with regard to the guilt of the petitioner and proved the prosecution case beyond shadow of doubt. A reading and appreciation of the statements of both prosecution and defence witnesses would show that the prosecution has been able to prove its case without creating any *iota* of suspicion.

PW-1 Surinder Singh who is the brother of the deceased Jaswant Singh stated in clear terms that on 06.04.2015 he alongwith his elder brother Jaswant Singh (deceased) were going on their cycles from Bahadurgarh towards village Chamarherri and at about 4:30 pm when his brother was going on cycle ahead of him and when they reached near Casaba Resort Palace, near Mithu Majra Main Road on Patiala – Rajpura road then from the side of Bahadurgarh one Tata Xenon car No.CH-01-AX/8725 which was being driven by Jaswinder Singh (petitioner) in rash and negligent manner at high speed struck into the cycle of his brother from back side and due to which his brother Jaswant Singh fell into dig alongside the road and cycle collapsed with the aforesaid vehicle and his brother received injuries on his head and thereafter, ambulance was called and he was taken to the Government Rajindra Hospital, Patiala where he was declared brought dead. He further stated that on 09.04.2015 petitioner was called at the police station where he was identified as the same person who was driving the offending vehicle. He further identified the accused petitioner who was present in the Court. This witness was subjected to intensive cross-examination by the defense counsel. A Perusal of the said cross-examination would show that there is no discrepancy with regard to

his depositions made before the learned Trial Court and there is nothing to show that his statement can be discredited in any manner.

The argument raised by learned counsel for the petitioner that the said eye witness was an interested witness and therefore, his testimony cannot be relied upon does not carry any weight in view of the fact that nothing has come on record to show as to why the testimony of the said eye witness can be discarded merely on the basis of the fact that he happens to be the brother of the deceased. For this purpose, the depositions made by the other witnesses would also be relevant as they have also substantiated the prosecution version. In the statement of Dr. Preet Inder Singh Chahal, Sr. Resident Govt. Medical College, Patiala PW-3 who conducted the post mortem examination of the deceased described the wounds and the injuries and stated the cause of death in this case was intracranial hemorrhage which was due to injuries which were antemortem in nature and sufficient to cause death in the ordinary course of nature. He stated in his statement that the injuries in this case are as found in case of accident. Gurpiar Singh PW-4 police official who was also a part of the police party alongwith the Investigating Officer stated that he alongwith the police party and the complainant Surinder Singh went to the place of occurrence and thereafter, a rough site plan of the place of occurrence was prepared and the Investigating Officer took into possession the vehicle Tata Xenon car No.CH-01-AX/8725 vide recovery memo Ex:P-4 and they also took into possession the cycle of Hero make vide recovery memo Ex:P-3 and both the memos were witnessed by him and the complainant Surinder Singh. This witness was also subjected to cross-examination in which he stated that no investigation of any sort was made at the spot or nearby hotel at the

accident. Statement of aforesaid witness would show that although on the spot, recovery of the vehicle was made and possession of the vehicle was taken but further inquiry was not made from nearby people or hotel. However, statement of Lakhwinder Singh PW-5 who was the photographer would show that he stated that on 07.04.2015, he went and clicked the photographs of accidental vehicle and handed over the same to the Investigating Officer which was taken into police possession vide memo Ex:PW-5/A. Another witness Davinder Singh Rawat PW-6 who was a Data Entry Operator in the office of RLA Chandigarh i.e. the Licensing Authority who deposed that he had brought the attested copy of screen report of RC No.CH01AX8725 which was issued by their office in the name of Jaswinder Singh (petitioner) and which was valid upto 15.04.2029, therefore, proved that the petitioner was owner of the said vehicle. Another witness namely HC Rajinder Kumar was examined as PW-7 and stated that he is posted as head mechanic in the Police Line, MT Branch Patiala and has an expertise of 30 years in the field of mechanical and that he has mechanically examined the offending vehicle and the cycle and has prepared his report. Thereafter, the Investigating Officer namely Manjit Singh ASI was also examined as PW-8 who very clearly stated and supported the prosecution version. He specifically stated that when he alongwith the police party and the complainant went to the place of accident and prepared a rough site plan of the same vide Ex:PW-8/5 and from the spot accidental vehicle i.e. Ladies hero cycle in broken condition belonging to deceased and the offending vehicle Tata Xenon was taken into police possession vide memos Ex:-3 and P-4 in the presence of HC Gurpiar Singh and Surinder Singh Complainant after taking their photographs. He also

took the mechanical test reports of the accident vehicle by HC Rajinder Kumar on the same day after returning from the spot. After that the cycle was given on superdari to the complainant Surinder Singh. Thereafter, on 09.04.2015 the Sarpanch of village Daulatpur produced the accused Jaswinder Singh before him and after making inquiries from him, he arrested the petitioner and thereafter, personal search was also conducted. The petitioner produced the RC of the vehicle and his driving license alongwith insurance documents which were taken into police possession vide memo Ex-P7. Further stated that the accused was also identified by complainant on the same day. This witness was also subjected to intensive cross-examination. However, no discrepancy was found to discredit the statement of the aforesaid witness who was the Investigating officer of the case.

Learned counsel for the petitioner relied upon the statement of DW-1 Himmat Singh, who stated that he had taken lift in the vehicle belonging to Jaswinder Singh (petitioner) and that when they were travelling from Patiala to Chandigarh on reaching Rajpura they saw accident on the road where injured persons were lying and they helped him and that the vehicle which was driven by the petitioner met with an accident. In his cross-examination he admitted that the vehicle Tata Xenon was driven by the petitioner Jaswinder Singh and denied that any accident took place due to rash and negligent driving of the petitioner. The aforesaid witness was not given credit by the learned lower Courts particularly in view of the fact that he had taken the lift and that he saw the injured was lying on the road. Such kind of evidence was not enough to counter and to raise any suspicion with regard to the depositions which were made by the prosecution witnesses where prosecution have been able to prove the case beyond any

suspicion or doubt. There was nothing to show that the witnesses of the prosecution and the factum of accident itself can be doubted merely on the basis of one statement of DW-1 especially when the offending vehicle was recovered on the spot and was mechanically tested by the mechanic and therefore, would out rightly demolish the statement of DW-1 wherein it was stated by him that no accident took place with the offending vehicle.

The argument raised by learned counsel for the petitioner that there was delay of one day in lodging the FIR would not be of any significance in the present case in view of the fact that the accident took place at around 4:30 pm and thereafter, the body of the deceased was brought to the hospital in the evening where he was declared to be brought dead and was sent to the dead house of the hospital which is supposed to be a mortuary. The police started its process on the next day by registering FIR which can not itself become a ground for disbelieving the prosecution version.

Another argument raised by learned counsel for the petitioner that there is nothing to show that the body was brought to the hospital is also factually incorrect because the body was infact brought to the hospital and post martem was conducted by the doctor who had also deposed before the learned Trial Court.

Next argument raised by learned counsel for the petitioner that identification parade was not conducted is also not correct particularly, in view of the fact that the complainant had identified the petitioner in the Court which is reflected from the statement of the complainant Surinder Singh.

The next argument by learned counsel for the petitioner that no

inquiry was made at the spot cannot cut any ice because the entire investigating team went on the spot on the next day and from the spot the offending vehicle as well as cycle were recovered and the pictures were also clicked which have been proved on record. So far as the conducting of inquiry from the nearby shops etc is concerned, the same would not be fatal to the prosecution because the offending vehicle and cycle were recovered on the next day and were in a damaged condition and thereafter, put to mechanical scrutiny which have been proved on record.

After giving thoughtful consideration to the evidence and the impugned judgments, it can be safely concluded that the prosecution had been able to prove his case beyond any reasonable doubt, considering the testimony of the prosecution witnesses who have been subjected to proper cross-examination and perusal of the same as discussed aforesaid would show that there is nothing to show as to why the statements of the eye witness and the other witnesses can be discredited on any ground. PW-1 Surinder Singh who happens to be the brother of the deceased has given a detailed description of the accident which has been corroborated by the other evidence. The offending vehicle was also taken into possession and was subjected to mechanical scrutiny, the owner of the vehicle who was the petitioner has also been proved by the Regional Licensing Authority and the doctor who conducted the post mortem examination had also stated that injuries in this case are as found in the case of an accident and therefore, both the learned Courts below rightly did not believe the statement of DW-1 in this regard.

In view of the above, This Court does not find any merit in the present Revision petition as there is no ground available to the petitioner to

interfere in the concurrent findings of the learned Courts below.
Consequently, present petition is dismissed.

26th February, 2020
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>